

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re ROBERT RUTHERFORD,

No. C 12-3380 YGR (PR)

ORDER OF DISMISSAL

This action was opened on June 29, 2012 when the Court received from Petitioner Robert Rutherford a letter addressed to Senior District Court Judge Justin L. Quackenbush, who is currently a senior district court judge in the United States District Court for the Eastern District of Washington. Judge Quackenbush had presided over Petitioner's federal criminal case in this District, United States v. Rutherford, Case No. CR 94-0427-10 JLQ.

The Clerk of the Court filed Petitioner's aforementioned letter as a new habeas corpus action. The Clerk then sent out a notice that Petitioner had not filed a petition, and cautioned that the action would be dismissed if he did not submit a petition within thirty days. The Clerk also sent out a notice that this action was deficient due to Petitioner's failure to pay the filing fee or furnish a completed and signed Court-approved *in forma pauperis* application, and cautioned that the action would be dismissed if he did not pay the fee or file the application within thirty days.

On July 30, 2012, Petitioner filed a motion entitled, "Motion to Dismiss CV-12-3380-YGR Without Prejudice and to Submit § 3582(c)(2) Motion for Reduction of Sentence." (Docket No. 4.) In his motion, Petitioner explains that he did not intend to commence a new action but only to file a "Motion for a Reduction of Sentence, pursuant to 18 U.S.C. § 3582(c)(2) and in conjunction with the NEW AMENDMENT 750 and the Fair Sentencing Act of 2010." (July 30, 2012 Mot. at 1.) Therefore, the Court construes his filing as a motion to dismiss this action as filed in error.

In light of Petitioner's explanation that the letter he sent to Judge Quackenbush was not intended to commence a new action, his motion to dismiss this action as filed in error is GRANTED (Docket No. 4). Accordingly, this action is DISMISSED as opened in error. This Court will not

1 rule on Petitioner's Motion for a Reduction of Sentence because that motion should have been filed
2 in his federal criminal case, Case No. CR 94-0427-10 JLQ. Therefore, the dismissal of this action is
3 without prejudice to Petitioner filing a Motion for a Reduction of Sentence in his federal criminal
4 case, Case No. CR 94-0427-10 JLQ.

5 The Clerk is directed to send electronic copies of the original letter to Judge Quackenbush
6 (Docket No. 1), the "Motion to Dismiss CV-12-3380-YGR Without Prejudice and to Submit
7 § 3582(c)(2) Motion for Reduction of Sentence" (Docket No. 4), and this Order to Judge
8 Quackenbush's courtroom deputy. No filing fee is due. The Clerk shall close the file.

9 IT IS SO ORDERED.

10 DATED: August 23, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
For the Northern District of California